

SENATE BILL NO. 229

INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING NET OPERATING LOSS DEDUCTIONS FOR CORPORATION LICENSE TAX AND INCOME TAX PURPOSES; ELIMINATING NET OPERATING LOSS CARRYBACKS; ~~REDUCING~~ INCREASING THE TIME PERIOD THAT NET OPERATING LOSSES MAY BE CARRIED FORWARD; AMENDING SECTIONS 15-31-103, 15-31-119, AND 15-31-509, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation -- application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 ~~taxable~~ tax years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" or "tax year" means a research and development firm's ~~taxable~~ tax year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or ~~his~~ the officer's agent shall file with the department of ~~revenue~~ an application for treatment as a research and development firm.

(b) The application must be made on a form ~~to be~~ provided by the department. The form must include, at a minimum:

- (i) the name and address of each officer of the research and development firm;
- (ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-216;
- (iii) the address of its initial registered office required for the purpose of incorporation as required in 35-1-216;
- (iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215;
- and
- (v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The ~~director of the~~ department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 ~~taxable tax~~ years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those ~~taxable tax~~ years. This treatment of a research and development firm extends to ~~net operating loss carryback and net operating loss carryforward~~ provisions allowed under ~~this chapter~~ 15-31-119."

Section 2. Section 15-31-119, MCA, is amended to read:

"15-31-119. Net Carryover of net operating losses -- ~~carryovers and carrybacks~~. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the ~~taxable tax~~ period ~~plus the net operating loss carrybacks to the taxable period~~.

(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection ~~(6)~~ (5).

~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)(3)~~ A net operating loss for any ~~taxable tax~~ period ending after ~~December 31, 1975~~, in addition to

1 ~~being a net operating loss carryback to each of the three preceding taxable periods; [the effective date of this~~
2 ~~act]~~ must be a net operating loss carryover to each of the ~~seven taxable~~ five 10 tax periods following the ~~taxable~~
3 ~~tax~~ period of the loss.

4 ~~(5)(4) Except as provided in subsection (11), the~~ The portion of the loss that must be carried to each
5 of the other ~~taxable tax~~ years must be the excess, if any, of the amount of the loss over the sum of the net
6 income for each of the prior ~~taxable tax~~ periods to which the loss was carried. For purposes of this subsection,
7 the net income for the prior ~~taxable tax~~ period must be computed with the modification specified in subsection
8 ~~(6)(b)~~ (5)(b) and by determining the amount of the net operating loss deduction without regard to the net
9 operating loss for the loss period or any ~~taxable tax~~ period after the loss period, and the net income ~~so that is~~
10 computed may not be considered to be less than zero.

11 ~~(6)(5)~~ The modifications referred to in subsection (2) are as follows:

12 (a) The net operating loss deduction may not be allowed.

13 (b) The deduction for depletion may not exceed the amount that would be allowable if computed under
14 the cost method.

15 (c) Any net operating loss carried over to any ~~taxable tax~~ year must be calculated under the provisions
16 of this section effective for the ~~taxable tax~~ year for which the return claiming the net operating loss carryover is
17 filed.

18 ~~(7)(6)~~ A net operating loss deduction ~~may be~~ is allowed only with regard to losses attributable to the
19 business carried on within the state of Montana.

20 ~~(8)(7)~~ In the case of a merger of corporations, the surviving corporation ~~may is not be~~ allowed a net
21 operating loss deduction for net operating losses sustained by the merged corporations prior to the date of
22 merger. In the case of a consolidation of corporations, the new corporate entity ~~may is not be~~ allowed a
23 deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

24 ~~(9)(8)~~ Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
25 of tax resulting from a net operating loss ~~carryback or~~ carryover.

26 ~~(10)(9)~~ The net operating loss deduction must be allowed with respect to ~~taxable tax~~ periods.

27 ~~(11)~~ A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
28 carryback period. If the election is made, the loss may be carried forward only. The election must be made on
29 or before the date on which the return is due, including any extension of the due date, for the tax year of the net
30 operating loss for which the election is to be in effect. The election is irrevocable for the year made.

1 ~~(12)~~(10) Notwithstanding any other provision of this section, the net operating loss deduction is not
2 allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined
3 in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or
4 renumbered."

5
6 **Section 3.** Section 15-31-509, MCA, is amended to read:

7 **"15-31-509. Periods of limitation.** (1) Except as otherwise provided in 15-31-544 and this section, a
8 deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice
9 of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For
10 the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the
11 last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents
12 in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the
13 period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may
14 not apply when:

15 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of
16 federal tax if the suspension of the limitation set forth in this section lasts:

17 (i) only as long as the suspension of the federal statute of limitation; or

18 (ii) until 1 year after the federal changes have become final or an amended federal return is filed as a
19 result of the suspension of the federal statute, whichever is the latest in time; or

20 (b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until 3 years
21 after the federal changes become final or the amended federal return was filed, whichever the case may be.

22 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after
23 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,
24 whichever period expires ~~the~~ later, unless before the expiration of the period the taxpayer files a claim for the
25 refund or credit or the department has determined the existence of the overpayment and has approved the
26 refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time
27 within which the department may propose an additional assessment, the period within which a claim for refund
28 or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be
29 extended.

30 ~~(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback~~

1 adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must
2 be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year
3 of the net loss that results in the carryback.

4 ~~(4) If the year of the net operating loss is open under either state or federal waivers, the year to which~~
5 ~~the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the~~
6 ~~expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."~~

7
8 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2005.

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10 NEW SECTION. **Section 5. Applicability.** [This act] applies to net operating losses incurred for tax
11 periods ending after July 1, 2005.

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